IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1074 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHIJIBHAI CHHOTIYABHAI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. Special Civil Application No. 1074 of 2003
MR AJ PATEL for Petitioner No. 1
MS. NANDINI JOSHI AGP for Respondent No. 1
MR AJAY R MEHTA for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 14/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant petition under Articles 226 and 227 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash decision dated September 16/21, 2002 rendered by Special Land Acquisition Officer, Oil & Natural Gas Corporation Limited, Ankleshwar, by which application dated September 15, 1999 submitted by the petitioner under Section 28-A of the Land Acquisition Act, 1894 ('the Act' for short) is rejected on the ground that it is barred by limitation.

2. The petitioner was owner of land admeasuring 1-H 80 Are 9 Sq. mt. of Block No.977 situated in village Chanchvel, Taluka Vagra, District Bharuch. Pursuant to issuance of Notification under section 4 (1) of the Act, on November 15, 1990, the land of the petitioner and others were acquired for public purpose of providing Central Process facility at Gandhar. After publication of declaration made under Section 6 of the Act, on December 6, 1991, the Special Land Acquisition Officer had declared his award dated August 25, 1993 offering compensation to the claimants at the rate of Rs.3/- per sq.mt. Some of the claimants had sought references under Section 18 of the Act which were registered as LAR Cases Nos.66 of 1994 to 79 of 1994. The learned Civil Judge (S.D.)., Bharuch who had heard the references, had allowed the same by award dated May 7, 1999 and held that the claimants were entitled to additional compensation at the rate of Rs.22/- per sq.mt., over and above what was determined by the Special Land Acquisition Officer.

3. The case of the petitioner is that since he was serving at Bharuch, he came to know about the award passed by the Court only on May 30, 1999 through other claimants and, therefore, on May 31, 1999 he instructed his advocate to apply for certified copy of the award passed by the Court as he was desirous of filing of application under Section 28-A of the Act. According to the petitioner, his advocate had filed application for obtaining certified copy of the judgment and award on May 31, 1999 and delivery of the certified copy was taken on August 18, 1999. What is maintained by the petitioner is that the petitioner had thereafter filed an application under Section 28-A of the Act on September 15, 1999 requiring the Special Land Acquisition Officer to determine the amount of compensation payable to him on the basis of the amount of compensation awarded by the Court but the said application has been rejected by order

dated September 16/21, 2002 on the ground that the same is time barred which is illegal as the application filed on September 15, 1999 from the date of knowledge of the award by the petitioner on May 30, 1999 should have been treated as having been filed within time. According to the petitioner, the view taken by the Special Land Acquisition Officer i.e., that the application filed by the petitioner under Section 28-A of the Act is time barred is contrary to statutory provisions as well as relevant judicial decisions on the point and, therefore, the same should be set aside. Under the circumstances, the petitioner has filed instant petition and claimed relief to which reference is made earlier.

4. Mr. A.J. Patel, learned Senior Advocate of the petitioner, contended that limitation of three months for filing application for redetermination of compensation under Section 28-A of the Act would begin to start from the date of knowledge of the award by the petitioner and not from the date of the award of the Court as held by the Special Land Acquisition Officer and, therefore, the relief claimed in the petition should be granted. It was argued that the words "from the date of the Collector's award" appearing in Section 18 (2) (b) of the Act have been interpreted by the Supreme Court in Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another, AIR 1961 SC 1500 and State of Punjab v. Mst. Qaisar Jehan Begum and another, AIR 1963 SC 1604, to mean that date means date of award either communicated to or is known by party whether actually or constructively and after applying said principle to the phrase 'from the date of the award of the Court' appearing in Section 28-A of the Act, the application filed by the petitioner within the period of limitation from the date of knowledge of award of the Court should be treated as having been filed within the prescribed period of limitation. The learned counsel further contended that in Tota Ram v. State of U.P. and others, (1997) 6 SCC 280, the Supreme Court has taken the view that limitation of three months for filing application for redetermination of compensation begins to start from the date of the award of the Court and not from the date of knowledge of the award but while deciding the said case, the Supreme Court had not the benefit of considering the decisions rendered in Raja Harish Chandra (supra) as well as State of Punjab (supra) and, therefore, this Court should hold that the application filed by the petitioner under Section 28-A of the Act within three months from the date of knowledge of the award of the Court was not time barred and that the petitioner was entitled to claim relief under Section

28-A of the Act. According to the learned counsel, the view taken by the Special Land Acquisition Officer is not tenable in law and, therefore, the petition should be accepted.

5. Ms. Nandini Joshi, learned A.G.P. appearing for respondent No.1, has contended that in view of decision of the Supreme Court in Tota Ram (supra), limitation of three months for filing application for redetermination of compensation would begin to start from the date of the award of the Court and not from the date of knowledge of the award and, therefore, the petition should be dismissed.

6. Mr. Ajay R. Mehta, learned counsel of the respondent No.2, has urged that the view taken by the Special Land Acquisition Officer, i.e., that the application filed by the petitioner under section 28-A of the Act was time barred, is emminently just and, therefore, the prayer made in the petition should not be granted.

7. We have considered the submissions advanced at the bar and the documents forming part of the petition.

8. The plea that limitation of three months for filing application for redetermination of compensation would begin to start from the date of knowledge of the award and not from the date of the award of the Court, cannot be accepted in view of the decision of the Supreme Court in Tota Ram (supra). Therein the Supreme Court has firmly ruled that limitation of three months for filing application for redetermination of compensation begins to start from the date of the award of the Court and not from the date of knowledge of the award.

9. In Jose Antonio Cruz Dos R. Rodriguese and another v. Land Acquisition Collector and another, (1996) 6 SCC 746 it has been laid down as a proposition of law that limitation of three months for making application for redetermination of compensation must be computed from the date of award of the reference court on the basis of which redetermination is sought. There the question was whether the limitation of three months for making application for redetermination of compensation should be computed from the date of order of the appellate court dealing with the appeal against an award of the reference court. After referring to decisions in (i) Babua Ram and others v. State of U.P. and another, (1995) 2 SCC 689; (ii) Union of India and others v. Karnail Singh and others, (1995) 2 SCC 728; (iii) Union

of India and another v. Pradeep Kumari and others, (1995) 2 SCC 736 and (iv) Jose Antonio Cruz Dos R. Rodrigueses and another v. Land Acquisition Collector and another (1996) 1 SCC 88, a three-Judge Bench of the Supreme Court has held in paras 4 and 5 of the reported decision as under:

"4. We may now refer to the case-law. A two-Judge Bench of this Court in Babua Ram v. State of U.P. dealt with this precise question and held that the period of limitation begins to run from the date of the first award made on a reference under Section 18 of the Act, and successive awards cannot save the period of limitation; vide paragraphs 19 and 20 of the reporter. This view was reiterated by the same Bench in Union of India v. Karnail Singh wherein this Court held that the limitation of three months for an application for redetermination of compensation must be computed from the date of the earliest award made by a civil court, and not the judgment rendered by an appellate court. This was followed by the decision of a three-Judge Bench in Union of India v. Pradeep Kumari wherein it was held that the benefit under Section 28-A can be had within three months from the date of the award of the Reference Court on the basis whereof redetermination is sought. The earlier two decisions in the case of Babua Ram and Karnail Singh were overruled on the limited question that they sought to confine the right to seek redetermination to the earliest award made by the Court under Section 18 of the Act after the introduction of section 28-A into the Act. There is, however, no doubt that the period of limitation has to be computed from the date of the Court's award under Section 18 on the basis whereof redetermination is sought. Admittedly, in both the cases at hand, the applications for redetermination of compensation under Section 28-A were made long after the expiry of three months from the date of the award of the Court which constituted the basis for seeking redetermination. We are, therefore, of the opinion that the High Court was right in taking the view that both the applications were time-barred.

5. However, the counsel for the appellants drew our attention to an order made in the present proceedings by a two-Judge Bench in Jose

Antonio Cruz Dos R. Rodrigueses v. Land Acquisition Collector referring two questions to a five-Judge Bench, namely: (SCC pp.89-90, para 4)

"1. Whether the award of the Court, i.e., civil court made under Section 26 on reference under section 18 would also include judgment and decree of the appellate court under Section 54?"

"2. Whether each successive award or judgment and decree (if answer on Question No.1 is positive) would give cause of action to file application under Section 28-A; if so construed, does not such a construction violate the language used in Section 28-A when Parliament advisedly did not use such expressions?"

So far as the first question is concerned, there is no difference of opinion on the question that the period of limitation would start to run from the date of the Reference Court's order on the basis whereof the redetermination is sought. In the present case, the redetermination was sought on the basis of the Reference Court's order long after three months even from the time the last order had elapsed and hence the applications were clearly time-barred. We, therefore, do not see any need to keep these matters pending for decision by a five-Judge Bench."

A bare reading of the relevant extract reproduced above makes it clear that the period of limitation has to be computed from the date of the Court's award under section 18 of the Act on the basis whereof redetermination is sought. Under these circumstances, this Court is of the view that Special Land Acquisition Officer was justified in rejecting the application submitted by the petitioner under Section 28-A of the Act on the ground that it was barred by limitation.

10. The plea that the phrase "within three months from the date of award of the Court" should be interpreted to mean within three months from the date of award either communicated to or is known by the party whether actually or constructively in view of construction of phrase "from the date of the Collector's award" appearing in Section 18 (2) (b) of the Act adopted by the Supreme Court in Raja Harish Chandra (supra) and State of Punjab (supra), on the basis of sound principle of interpretation of statute to the effect that the same

expression appearing in the same statute should receive the same meaning unless there is anything to indicate contrary, cannot be accepted in view of the decision of Supreme Court in Tota Ram (supra) and Jose Antonio Cruz Dos R. Rodriguese (1996) 6 SCC 746 (supra) wherein Section 28-A of the Act specifically came up for interpretation and it is interpreted to mean that limitation starts to begin from the date of award of the court and not from the date of knowledge of award by the aggrieved person.

11. It is not in dispute that the application submitted by the petitioner under Section 28-A of the Act is time barred if limitation of three months for filing application for redetermination of compensation is computed from the date of award of the Court. Under the circumstances, this Court is of the opinion that the Special Land Acquisition Officer did not commit any error in rejecting the application filed by the petitioner under Section 28-A of the Act on the ground that it was time barred.

12. The net result of the above discussion is that the petition lacks merits and is liable to be dismissed.

13. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)
(karan)